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Strictly private & confidential

Presentation to:
Spanish Broadcasting System, Inc.

July 23, 1999

Deutsche Banc Alex. Brown

Deutsche Bank

Contents

Section 1

Deutsche Banc Alex. Brown / Spanish Broadcasting System, Inc. Team

Deutsche Banc Alex. Brown / Spanish Broadcasting System, Inc. Team

Senior Management

Mayo Shattuck
Co-Head of Global Investment Banking
William R. Burgess, Jr.
Co-Head of Global Industry Groups
Alexander T. Mason
Co-Head of Global Industry Groups

Investment Banking

Jeff Amling
Managing Director
Chip Carey
Principal
Blair Faulstich
Associate
Chris Patrick
Analyst

Equity Research

Andrew Marcus
Managing Director
Doug Mitchelson
Vice President

Spanish Broadcasting System, Inc

Capital Markets

David DiPietro
Managing Director
Doug Baird
Managing Director
Frank Comas
Principal

Syndicate

Michael Ott
Managing Director
Pat O'Shea
Principal

Corporate and Executive Services

William Boyd
Managing Director

Section 2

Deutsche Banc Alex. Brown Lead Managed Equity Offerings

Dominant Presence in Broadcasting and Out-of-Home Media

Recent Lead Managed Equity Offerings ($ in mm except per share amounts)

Client	At Filing Shares	At Filing Price	At Filing Amount	At Offering Shares	At Offering Price	At Offering Amount	Change File to Offer Price	Change File to Offer Size	Amount Raised	Date
Pinnacle Holdings	10.7	$23.75	$254.1	11.0	$25.00	$275.0	5.0%	3.0%	$275.0	07/21/99
Salem	7.5	$20.00	$150.0	8.4	$22.50	$189.0	12.0%	12.5%	$217.4	07/01/99
Clear Channel	18.0	$70.63	$1,300.0	20.0	$70.63	$1,412.5	0.0%	8.7%	$1,412.5	05/19/99
Pinnacle Holdings	20.0	$15.00	$300.0	20.0	$14.00	$280.0	-6.7%	-6.7%	$280.0	02/19/99
Clear Channel	15.0	$50.19	$752.8	15.0	$48.38	$725.7	-3.6%	-3.6%	$834.5	12/17/98
British Sky [1]	NA	NA	NA	111.5	$6.87	$766.0	NA	NA	$766.4	10/13/98
Lamar Advertising	6.4	$31.38	$200.0	6.4	$29.00	$184.9	-7.6%	-7.6%	$212.6	06/04/98
Capstar Broadcasting	31.0	$19.50	$604.5	31.0	$19.00	$589.0	-2.6%	-2.6%	$677.4	05/26/98
Clear Channel	5.5	$95.70	$526.3	6.0	$99.13	$594.8	3.6%	13.0%	$684.0	03/25/98
Chancellor Media	16.0	$41.25	$660.0	19.0	$47.25	$897.8	14.5%	36.0%	$1,032.4	03/09/98
Heftel Broadcasting	4.7	$45.13	$212.1	5.1	$41.50	$210.6	-8.0%	-0.7%	$235.5	01/16/98
Lamar Advertising	1.2	$30.75	$36.9	1.2	$30.75	$36.9	0.0%	0.0%	$36.9	11/12/97
Universal Outdoor	4.8	$36.25	$174.0	5.5	$35.00	$192.5	-3.4%	10.6%	$217.7	08/15/97
Outdoor Systems	12.7	$29.75	$377.8	13.0	$30.25	$393.3	1.7%	4.1%	$452.2	05/22/97
Clear Channel	10.0	$47.25	$472.5	11.0	$49.00	$539.0	3.7%	14.1%	$588.0	05/14/97
Heftel Broadcasting	3.9	$41.13	$158.4	4.6	$38.50	$175.2	-6.4%	10.6%	$195.4	02/04/97
Evergreen Media	8.0	$31.00	$248.0	9.0	$30.63	$275.6	-1.2%	11.1%	$312.4	10/17/96
Universal Outdoor	5.8	$34.25	$196.9	6.5	$37.00	$240.5	8.0%	22.1%	$276.6	10/09/96
Outdoor Systems	7.7	$27.50	$211.8	8.6	$34.50	$296.7	25.5%	40.1%	$341.2	08/19/96
Universal Outdoor	6.2	$13.50	$83.7	6.2	$14.50	$89.9	7.4%	7.4%	$103.4	07/23/96
Clear Channel	2.5	$78.00	$195.0	3.5	$84.00	$294.0	7.7%	50.8%	$323.4	06/14/96
Average Change File to Offer							1.8%	11.7%	$8,982.5	

(1) Bought deal. Numbers reflect number of ordinary shares bought; share price converted from British pounds.

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Section 3

Spanish Broadcasting System, Inc. IPO

Deutsche Banc Alex. Brown

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Positioning

Spanish Broadcasting System, Inc. Positioning

- Pure-play attractive radio sector
- Leading Hispanic radio operator
- Fast growing Hispanic radio niche
  - Fast Hispanic population growth in the US
  - Exploding purchasing power
  - Hispanic targeted radio advertising is fastest growing niche
  - Yet still significant ratings / revenue gap for Hispanic radio operators
- Radio stations in attractive markets which reach over 50% of the Hispanic population in the US:
  - Los Angeles, New York, Puerto Rico, Miami, Chicago and San Antonio
- Significant acquisition capacity after balance sheet re-capitalization with IPO proceeds
- Experienced and proven management team

Valuation Summary

Valuation Summary

IPO Assumptions	
Total Offering Size	$250,000
Gross Spread	6.50%
Deal Fee & Expenses	1.50%
Net Offering Proceeds	$230,000
Cash & Equivalents [1]	$36,736
Total Debt [1]	$389,634
Pro Forma Debt [2]	$171,553
Pro Forma Cash Position [2]	$36,736

	Pre-Money Equity Value	IPO Equity Value (15%)	Equity Trading Value	Total Firm Value	Total Firm Value as a Multiple of: 1999E EBITDA	2000E EBITDA	Public Ownership	Original Investor Ownership
Spanish Broadcasting System					$40,000	$52,000		
	$298,405	$548,405	$645,183	$780,000	19.5 x	15.0 x	45.6%	54.4%
	$342,605	$592,605	$697,183	$832,000	20.8 x	16.0 x	42.2%	57.8%
	$386,805	$636,805	$749,183	$884,000	22.1 x	17.0 x	39.3%	60.7%
	$431,005	$681,005	$801,183	$936,000	23.4 x	18.0 x	36.7%	63.3%
	$475,205	$725,205	$853,183	$988,000	24.7 x	19.0 x	34.5%	65.5%
	$519,405	$769,405	$905,183	$1,040,000	26.0 x	20.0 x	32.5%	67.5%
	$563,605	$813,605	$957,183	$1,092,000	27.3 x	21.0 x	30.7%	69.3%
	$607,805	$857,805	$1,009,183	$1,144,000	28.6 x	22.0 x	29.1%	70.9%
	$652,005	$902,005	$1,061,183	$1,196,000	29.9 x	23.0 x	27.7%	72.3%

[1] As of 3/28/99.

[2] Assumes IPO proceeds will be used to redeem 14.25% Sr. Exchangeable Preferred Stock

Comparable Company Analysis

Selected Comparable Company Analysis

Company Name	Adjusted Market Value[2] as a Multiple of: Cal. 99 Revenues Est.[3]	Cal. 00 Revenues Est.[3]	Pro Forma Cal. 99 EBITDA[3]	Pro Forma Cal. 00 EBITDA[3]	Price to Cal. 99 ATCF Per Share[3]	Price to Cal. 00 ATCF Per Share[3]	Net Debt[1] to Cal. 99 EBITDA[3]	98 EBITDA Margin[3]
AMFM [4]	7.9x	7.2x	18.2x	15.6x	24.5x	19.7x	6.4x	40.2%
Citadel	7.7x	7.1x	22.9x	19.7x	54.8x	38.3x	3.8x	31.7%
Clear Channel	9.7x	9.0x	26.8x	23.1x	34.0x	28.8x	3.6x	32.5%
Cox	7.2x	6.7x	21.3x	18.4x	31.4x	26.1x	2.9x	32.3%
Cumulus	5.0x	4.8x	18.2x	16.3x	37.1x	29.1x	8.3x	21.1%
Emmis	6.3x	5.6x	15.7x	13.6x	20.4x	16.4x	5.6x	38.8%
Entercom	8.4x	7.8x	26.8x	22.9x	33.8x	29.0x	2.7x	29.3%
Hispanic	20.7x	18.6x	49.4x	39.8x	59.9x	51.7x	.3x	38.3%
Infinity [5]	10.9x	10.1x	23.6x	20.5x	36.4x	29.9x	1.6x	43.2%
Radio One	10.4x	9.3x	29.9x	24.5x	54.5x	42.5x	4.6x	38.1%
Saga	4.3x	4.1x	13.3x	11.9x	17.1x	15.5x	3.2x	30.3%
Salem	6.9x	6.4x	19.7x	17.4x	30.6x	26.2x	.5x	33.0%
Sinclair	5.3x	5.1x	10.9x	10.2x	10.6x	9.4x	6.4x	47.8%
Westwood One	5.0x	4.6x	21.2x	17.5x	36.0x	26.2x	1.4x	22.1%

Min.:	4.3x	4.1x	10.9x	10.2x	10.6x	9.4x	.3x	21.1%
Mean:	[illegible]	[illegible]	22.4x	[illegible]	[illegible]	[illegible]	3.0x	[illegible]
Median:	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	3.6x	[illegible]
Max:	4.3x	4.1x	10.9x	10.2x	10.6x	9.4x	.3x	21.1%

Note: Calculations are based on financial results reported in the most recent 10-K and 10-Q filings and on estimates for the pro forma effect of announced acquisitions and financings.
All figures have been restated to exclude extraordinary credits/charges and discontinued operations. All estimates for pro forma events from BT Alex. Brown research.
Data is presented on a calendar year basis.
(1) Net Debt is Less Hidden Value.
(2) Adjusted Market Value is Defined as Equity Market Value + Net Debt.
(3) Source: Deutsche Banc Alex. Brown research estimates.
(4) Not pro forma for announced Lamar Advertising transaction
(5) Not pro forma for announced Outdoor Systems acquisition

Selected Comparable Company Analysis

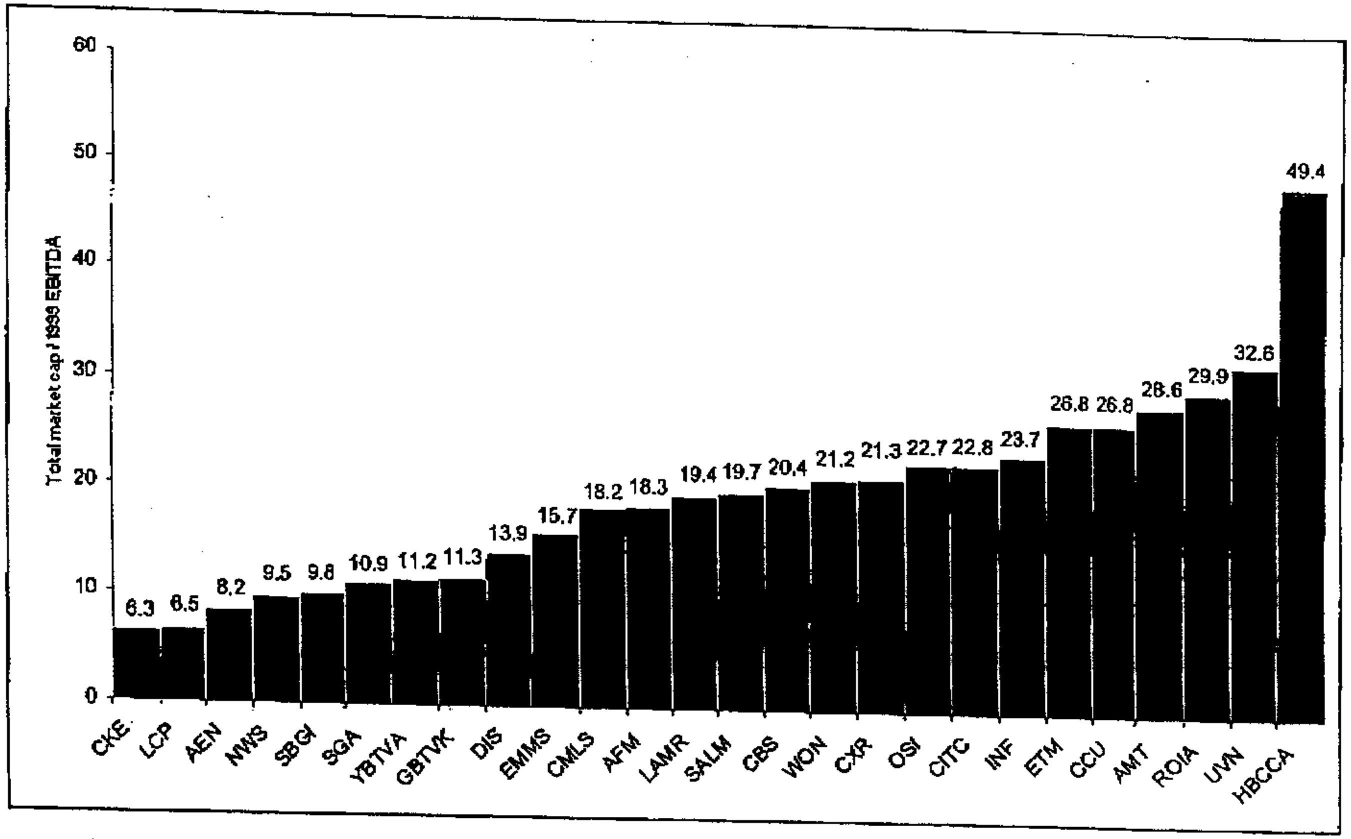
(Dollars in Thousands; Except Per Share Data)

Company Name / Ticker		FYE	Share Price 07/22/99	Fully Diluted Shares Out	Equity Market Value	Net Debt [1]	Adjusted Market Value [2]	Pro Forma Cal. 99 EBITDA [3]	Pro Forma Cal. 00 EBITDA [3]	ATCF Per Share Cal. 99 [3]	ATCF Per Share Cal. 00 [3]
AMFM AFM	[4]	Dec	$55.13	231,253	$12,747,810	$4,290,056	$17,037,866	$935,000	$1,094,000	$2.25	$2.80
Citadel CITC		Dec	$35.63	32,900	$1,172,063	$146,630	$1,318,693	$57,600	$67,000	$0.65	$0.93
Clear Channel CCU		Dec	$71.06	362,620	$25,768,684	$3,377,964	$29,146,648	$1,089,000	$1,262,600	$2.09	$2.47
Cox CXR		Dec	$56.50	28,406	$1,604,883	$249,000	$1,853,883	$87,048	$100,500	$1.80	$2.17
Cumulus CMLS		Dec	$24.13	22,943	$553,498	$379,699	$933,197	$51,300	$57,200	$0.65	$0.83
Emmis EMMS		Feb	$55.00	17,290	$950,950	$523,400	$1,474,350	$93,600	$107,189	$2.69	$3.34
Entercom ETM		Dec	$38.88	38,236	$1,486,425	$142,973	$1,629,398	$60,600	$71,000	$1.15	$1.34
Hispanic HBCCA		Dec	$76.06	51,667	$3,929,921	$25,675	$3,955,596	$80,000	$99,300	$1.27	$1.47
Infinity INF	[5]	Dec	$28.38	1,105,300	$31,362,888	$1,611,669	$32,974,556	$1,385,200	$1,605,256	$0.78	$0.95
Radio One ROIA		Dec	$42.50	18,050	$767,125	$140,499	$907,624	$30,400	$37,000	$0.76	$1.00
Saga SGA		Dec	$21.69	13,097	$284,041	$90,000	$374,041	$28,100	$31,500	$1.27	$1.40
Salem SALM		Dec	$21.69	23,736	$846,808	$4,422	$851,231	$33,100	$37,500	$0.89	$1.04
Sinclair SBGI		Dec	$18.19	105,754	$1,923,409	$2,434,100	$4,357,509	$399,000	$429,000	$1.71	$1.93
Westwood One WON		Dec	$39.25	58,410	$2,331,843	$85,100	$2,416,943	$114,000	$136,000	$1.09	$1.50

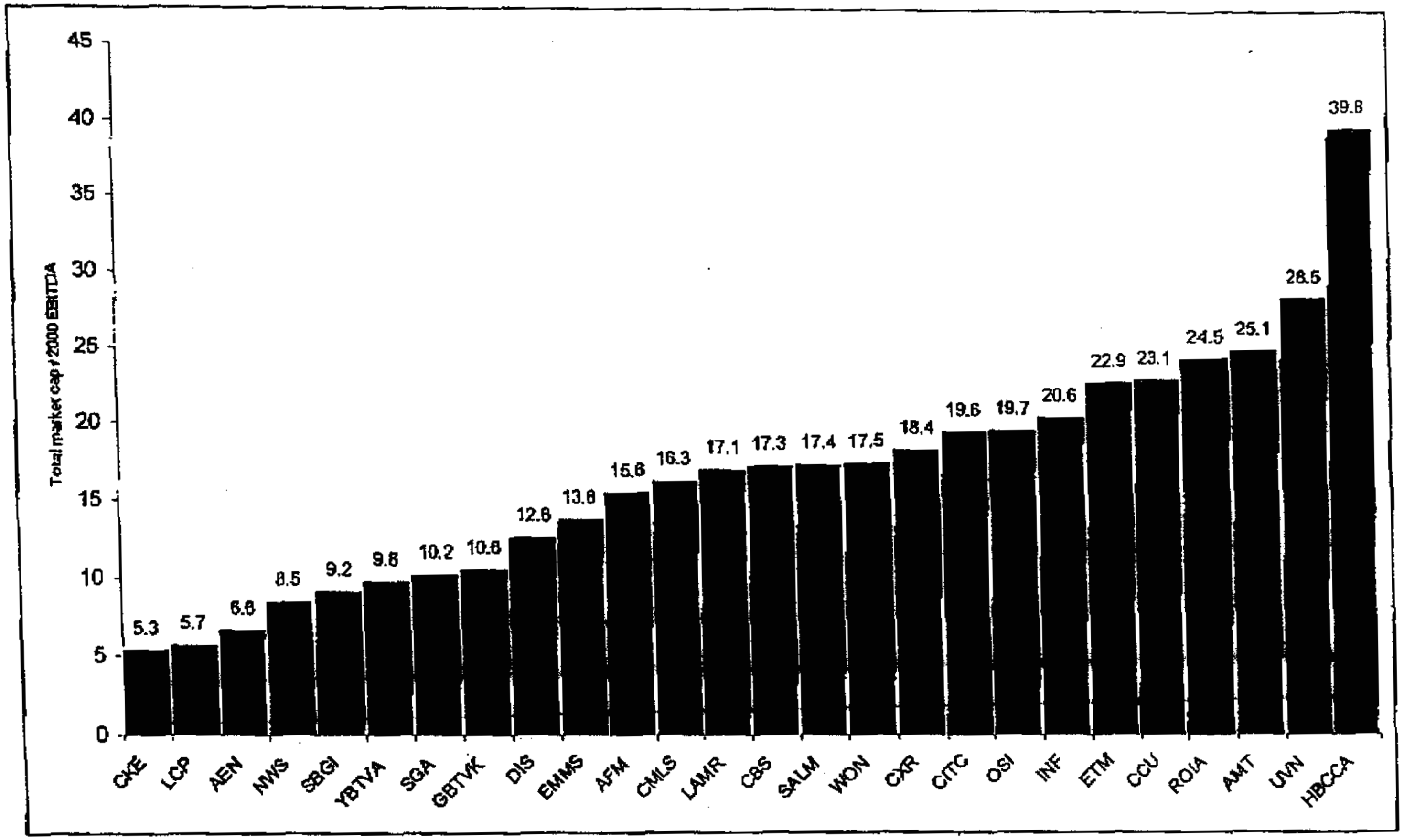
Note: Calculations are based on financial results reported in the most recent 10-K and 10-Q filings and on estimates for the pro forma effect of announced acquisitions and financings.
All figures have been restated to exclude extraordinary credits/charges and discontinued operations. All estimates for pro forma events from BT Alex. Brown research.
Data is presented on a calendar year basis.
[1] Net Debt is Less Hidden Value.
[2] Adjusted Market Value is Defined as Equity Market Value + Net Debt.
[3] Source: Deutsche Banc Alex. Brown research estimates.
[4] Not pro forma for announced Lamar Advertising transaction
[5] Not pro forma for announced Outdoor Systems acquisition

Selected Comparable Company Analysis

Total Market Cap / 1999 EBITDA



Selected Comparable Company Analysis



Summary Term Sheet

Initial Public Offering Summary Term Sheet

Offering Structure

Issuer	Spanish Broadcasting System, Inc.
Security	Class A Common Stock
Offering Size	$250 million
Primary Shares	$250 million
Secondary Shares	Up to $50 million (100% of over-allotment option)
Over-Allotment Option	15% of total shares offered

Underwriting Arrangements

Underwriters	Lehman Brothers, Deutsche Banc Alex. Brown and one additional Co-Manager
Underwriting Spread	6.25 - 6.50%
Underwriter Economics	Management and Underwriting: Pre-Determined Split Institutional pot: 100% competitive with cap on lead
Other Expenses	Company assumes legal, accounting and filing fees and management's roadshow travel

Distribution Arrangements

Distribution	Institutional: 75% - 80% (including 10-15% international) Retail: 20% - 25%
Lock-Up Provisions	180 days

Mr. Joseph A. Garcia
Chief Financial Officer
Spanish Broadcasting System
2601 South Bayshore Drive, PH 2
Miami, Florida 33133

(305) 441-6901

SPANISH BROADCASTING SYSTEM

Raúl Alarcón
PRESIDENT

August 13, 1999

L. Lowry Mays
Chief Executive Officer
Clear Channel Communications, Inc.
7710 Jones Maltsberger
San Antonio, Texas 78216-6944

McHenry T. Tichenor, Jr.
Chief Executive Officer
Hispanic Broadcasting Corp.
3102 Oaklawn Avenue
Dallas, Texas 75219

Gentlemen:

It has come to our attention that your companies, through their authorized agents and representatives, have been contacting various investment banking firms and leading media analysts in an attempt to prevent Spanish Broadcasting System, Inc. from obtaining the cooperation and backing of the investment banking community for SBS's upcoming initial public offering. As explained below, such conduct by Clear Channel and Hispanic Broadcasting is actionable under both state and federal law. Accordingly, SBS will not hesitate to take appropriate legal action against your companies if the conduct described in this letter does not cease immediately.

We have been advised by counsel that the conduct described above - the clear object of which is to deprive SBS of the cooperation and resources of the financial community for its upcoming initial public offering - is legally actionable. To begin with, the conduct exposes your companies to substantial civil liability under numerous state laws, including:
(1) tortious interference with business relationships and economic advantage; (2) interference with prospective contractual relations; and (3) defamation. In addition, Clear Channel's active involvement in Hispanic

3191 CORAL WAY, SUITE 805, MIAMI, FL 33145, TEL. (305) 443-9090 FAX (305) 444-2179

SPANISH BROADCASTING SYSTEM

Broadcasting's efforts to derail our initial public offering - apart from violating FCC passive investment regulations - constitutes a conspiracy to restrain trade in violation of federal and state antitrust law. Finally, the financial institutions your companies have been threatening may themselves have standing to complain about your companies' tactics, which are difficult to distinguish from extortion.

Unless your companies immediately cease the conduct described above, SBS will have no choice but to take appropriate legal action and seek all appropriate relief (including damages). Indeed, to the extent SBS has already suffered harm because of your companies' conduct, we are reserving all our legal rights.

Sincerely,

Raúl Alarcón, Jr.
Chief Executive Officer
Spanish Broadcasting System, Inc.

cc: Kay, Scholer, Fierman, Hays & Handler, LLP

Mr. Alfredo Alonso
President
Mega Communications
360 Lexington Avenue
New York, New York 10017

(646) 227-1320

SUBMISSION OF SPANISH BROADCASTING SYSTEMS, INC. TO THE ANTITRUST DIVISION OF THE UNITED STATES DEPARTMENT OF JUSTICE REGARDING PROPOSED MERGER OF CLEAR CHANNEL COMMUNICATIONS, INC. AND AMFM, INC.

KAYE, SCHOLER, FIERMAN,
HAYS & HANDLER, LLP
425 Park Avenue
New York, New York 10022
(212) 836-8000

Of Counsel:

Jason L. Shrinsky
Richard M. Steuer
Howard Kleinhendler

December 23, 1999

As requested, Spanish Broadcasting Systems, Inc. submits the following memorandum.

Introduction

The proposed merger between Clear Channel Communications, Inc. ("Clear Channel") and AMFM Inc. will create the largest out-of-home media company in the world with over 830 domestic radio stations. In the Government's review of that merger, Clear Channel's 28.7% interest in Hispanic Broadcasting Inc.'s ("Hispanic") common stock warrants close examination. Without a thorough investigation into Clear Channel's relationship with Hispanic, a significant potential for anticompetitive practices in the radio markets where Clear Channel and Hispanic own and operate radio stations, or practices leading to a monopoly position, will be left unchecked.

Hispanic is the largest owner and operator of Spanish language radio stations in the United States. Spanish language radio is concentrated in fifteen major markets and Hispanic has announced a corporate strategy of dominating all of these markets through an aggressive, short term, $1 billion acquisition campaign which includes acquiring radio stations presently being divested by Clear Channel as part of its merger with AMFM. Through its 28.7% stock interest in Hispanic, which as demonstrated below, provides Clear Channel significant influence over Hispanic's business operations, Clear Channel will be able to use its vast new resources to boost both the Clear Channel and Hispanic stations to the top of the radio markets, leading to anticompetitive or monopolistic activity. Ultimately, Clear Channel stands to reap huge financial benefits through its ownership in, and control over, Hispanic. Thus, a thorough investigation of Clear Channel's holdings in Hispanic should be pursued before the AMFM merger is consummated.

Factual Background

Clear Channel's merger with AMFM will create a $23.5 billion media giant.[1] Even after the companies' anticipated divestitures, the new entity will own 830 radio stations in 187 United States markets.[2] Aside from its wholly owned radio stations, Clear Channel currently holds a 28.7% stake of the outstanding common stock of Hispanic Broadcasting Corp. formerly known as Heftel Broadcasting Corp.[3] Hispanic is the largest Spanish language broadcaster in the United States, owning 45 stations, and has announced plans to make $1 billion in acquisitions in the next three to four years.[4] Hispanic's announced corporate strategy is to "own and program top performing Spanish language radio stations, principally in the fifteen largest Spanish language radio markets in the United States."[5] As part of its acquisition efforts in Spanish language radio, Hispanic has announced that it has submitted bids to Clear Channel to acquire stations being divested in the Clear Channel AMFM merger.[6] Currently, it is reported that eventually Hispanic intends to own three FM stations and one AM station in each of the fifteen largest Spanish language markets, where the listening audience is expected to reach 11.8 per cent of the United States population by 2000.[7]

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1 Clear Channel Press release, October 4, 1999. (Attached as Exhibit 1).

2 Id.

3 The company changed its name in June 1999. Heftel Broadcasting Corp. Proxy Statement filed June 3, 1999. (Attached as Exhibit 2).

4 Bloomberg.com, December 8, 1999. (Attached as Exhibit 3).

5 Heftel Prospectus Supplement to Prospectus dated December 24, 1997, dated June 1, 1999, at pg. S-4. (Attached as Exhibit 4).

6 Bloomberg.com, December 8, 1999.

7 Id.

This combination of radio stations coupled with the Clear Channel ownership of an additional five (5) FM stations in the same market is anticompetitive.

Clear Channel's ownership interest in Hispanic is significant. Presently, Clear Channel owns all of Hispanic's outstanding non-voting Class B Common Stock[8] which is convertible at will, at any time, to voting Class A common stock.[9] As of March 31, 1999, Clear Channel's Class B Common Stock holdings, if converted on that date, would give it 28.7% of all outstanding Hispanic Class A voting stock.[10] This is the single largest shareholder position in Hispanic. The present Class A stock of Hispanic is held largely by the Tichenor family. McHenry T. Tichenor, Jr., Hispanic's president owns 20.5%, McHenry Tichenor, a director, owns 20.4% and Warren W. Tichenor owns 20.5 % of Hispanic stock.[11]

Even if not converted, Clear Channel's Class B stock holdings give it a remarkable degree of control over the corporate activity of Hispanic. Under Hispanic's Certificate of Incorporation, as long as Clear Channel owns 20% of Hispanic's stock,[12] Clear Channel must consent in writing before Hispanic may:

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8 Heftel, June 3, 1999 Proxy Statement, at pg. 4.

9 Second Amended and Restated Certificate of Incorporation of Heftel Broadcasting Corporation, filed March 3, 1997, § 5.7(c), at pg. 3 ("Each Class B Share shall be convertible, at the option of its holder, into one fully paid and non-assessable Class A Share at any time.") (Attached as Exhibit 5). See also id., at § 5.5 ("The holders of Class A Shares shall vote on all matters submitted to a vote of the stockholders").

10 Heftel Prospectus, dated June 1, 1999, at S-6.

11 Heftel June 3, 1999 Proxy Statement, at pg. 5.

12 This interest is "calculated as if all Class B Shares owned, or deemed owned by [Clear Channel] had been converted to outstanding Class A Shares." Heftel March 3, 1997 Amended Certificate of Incorporation, § 5.10 at pg 5.

a) sell or transfer all or substantially all of its assets or merge with another entity where Hispanic's shareholders, prior to merger, would not own at least 50% of the capital stock of the surviving entity;

b) issue any shares of Preferred Stock;

c) amend the corporation's certificate of incorporation if such amendment adversely affects the rights of Class B Shareholders;

d) declare or pay any non-cash dividends or any non-cash distribution;

e) amend the articles of incorporation concerning the corporation's capital stock.

Second Amended and Restated Certificate of Incorporation of Heftel Broadcasting Corporation, filed March 3, 1997, § 5.10. (Exhibit 5).

In a recent prospectus, Hispanic admitted that the control Clear Channel exerts over Hispanic's business activities, as described above, "could have the effect of delaying or preventing a change in control, which could deprive our stockholders of the opportunity to receive a premium for their shares. These provisions could also make us less attractive to a potential acquirer and could result in holders of Class A common stock receiving less consideration upon a sale of their shares than might otherwise be available in the event of a takeover attempt." Heftel Prospectus Supplement to Prospectus dated December 24, 1997, dated June 1, 1999, at pg. S-6. (Exhibit 4). Hispanic also recently admitted that Clear Channel's 28.7% stock interest had the further potential materially to affect Hispanic's business operations:

> "Clear Channel owns a significant percentage of our common stock. Any direct or indirect sales of our stock by Clear Channel could have a material adverse effect on our stock price and could impair our

ability to raise money in the equity markets."

Id.

Finally, Hispanic reports that "Clear Channel has advised us that it does not intend to engage in the Spanish language radio broadcasting business in the United States, *other than through its ownership of our shares.*" Id. (emphasis added).

Analysis

The potential anticompetitive effect of Clear Channel's continued ownership of 28.7% of Hispanic's stock is manifest. Clear Channel's 28.7% stock interest results in significant control over Hispanic's business activities:

First, Clear Channel may control Hispanic's ability to raise cash to fund new acquisitions by restricting Hispanic's ability to issue Preferred Stock, or change its capital stock structure. Second, Clear Channel's ability to transfer its stock position can, as Hispanic has recognized, materially affect Hispanic's stock price. The specter of having its stock price plunge through Clear Channel's unilateral activity undoubtedly can have a controlling effect on the manner in which Hispanic executives reach crucial business decisions. Moreover, any volatility in its stock price would have an adverse effect on any potential financing Hispanic hopes to obtain for its corporate expansion in Spanish language radio.

Finally, Clear Channel has the ability to convert its Class B shares to voting Class A shares at any time and thereby exert significant influence over the election of directors to Hispanic's board. Thus, Clear Channel, through its enhanced status and massive resources as a result of its merger with AMFM, could assist in Hispanic's growth and dominance in Spanish language radio through Hispanic's $1 billion acquisition program and then convert its stock into voting shares effectively seizing the largest single voting interest in what would be the dominant Spanish language radio station owner and operator in the country.

At a minimum, therefore, the relationship between Clear Channel and Hispanic requires close scrutiny. Hispanic's disclosures in its public filings recounted above demonstrate the potential controlling and intimidating effect Clear Channel's own interests may have on Hispanic's business operations. The prospect of Clear Channel's control is all the more suspect in this case where over 60% of the Hispanic's Class A stock is controlled by members of the Tichenor family. Together, the Tichenors and Clear Channel would control nearly 90% of Hispanic's stock. This two-party relationship needs to be plumbed before Clear Channel is permitted to retain its interest in Hispanic in its merger with AMFM.

Under the antitrust laws, one entity can control another even without a majority stock ownership. Thus, courts construing Section 7 of the Clayton Act and the intraenterprise conspiracy doctrine under Section 1 of the Sherman Act have long recognized that a corporation can exert control over a subsidiary even if the parent owns less than 50% of the subsidiary's stock. The issue of control is factual in nature and calls on courts and regulators to examine the relationship between entities that appear to be closely related. This also conforms with Congress's intent to require disclosure of acquisitions in excess of 10% under Hart-Scott-Rodino Premerger Notification, subject to review by regulators.

<u>The Clayton Act</u>

It is well settled by the United States Supreme Court that a partial acquisition, including a passive investment in another entity, may be subject to antitrust liability under the Clayton Act. Indeed, "any acquisition by one corporation of all or any part of the stock of another corporation . . . is within the reach of [§ 7]." U.S. v. E.I. Du Pont De Nemours and Co., 353 U.S. 586, 592 (1957). Moreover, the initial acquisition is not the only event subject to scrutiny. In Du Pont the Court rejected appellants claim that § 7 did not apply "to the holding or subsequent use of the stock," finding that the Clayton Act's aim was to "arrest apprehended consequences of inter corporate relationships before those relationship could work their evil which may be at *or any time after* the acquisition, depending upon the circumstances of the case." Id. at 596-97 (emphasis added). The Court concluded that the "Government may proceed at any time that an acquisition may be said with reasonable probability to contain a threat that it may lead to a restraint of commerce or tend to create a monopoly" Id. at 597 (reinstating Government action under the Clayton Act relating to Du Pont's 23% stake in General Motors, the main buyer of Du Pont fabrics and other automotive products).

It is not only the de facto control by one corporation over another that raises antitrust concerns, continued cooperation leading to eventual control is also actionable. In Denver and Rio Grande Western Railroad Co. v. U.S., 387 U.S. 485, 504 (1967), the Supreme Court rejected Greyhound's argument that its acquisition of 20% of the stock of Railroad Express Agency ("REA"), another motor common carrier, did not sufficiently evidence Greyhound's control over REA to warrant continued investigation by the Interstate Commerce Commission of the potential anticompetitive effect of the transaction. The Court held that although REA's board was presently controlled by other railroad corporations, there was a danger of future cooperation between Greyhound and REA that merited further investigation:

> "It is not the possibility of control that may prejudice appellants and the public interest, but simply the fact that with Greyhound holding 20% of REA's stock there is likely to be immediate and continuing

> cooperation between the companies which appellants claim will be to their detriment and which the Government concedes may be against the public interest. If appellants are correct, and if such an alliance would in fact be against the public interest, then § 7 of the Clayton Act requires that it be stopped in its incipiency."

Id. at 504. See also Gulf & Western Industries, Inc. v. Great Atlantic Pacific Tea Company, Inc., 476 F.2d 687, 694 (2d Cir. 1973) (affirming preliminary injunction, under § 7 of the Clayton Act, enjoining Gulf & Western's tender offer for 19% of A&P, the supermarket chain, where facts demonstrated that "purpose of the acquisition is very likely to provide a basis for eventual control of A&P by G&W"); Crane Co. v Harsco Corp., 509 F. Supp. 115, 123 (D. Del. 1981) (finding that Crane's tender offer for 20% of Harsco, even where Crane stated that its purpose was for investment, was "not exempt from antitrust scrutiny" where "the interest sought to be acquired is sufficiently large that influence or control is a realistic possibility").

In sum, an investigation into the relationship between Clear Channel and Hispanic is warranted because Clear Channel's 28.7% interest in Hispanic gives Clear Channel significant influence, if not *de facto* control, over Hispanic's ability to carry out its business operations, including Hispanic's announced $1 billion expansion plan. At a minimum, there is a serious threat that Clear Channel and Hispanic will cooperate to drastically concentrate control over Spanish language radio through possible anticompetitive practices.

The Intraenterprise Conspiracy Doctrine

Another area of antitrust law that sheds light on the proposition that a minority interest in another entity can create a unity of interest among the parties is the intraenterprise conspiracy doctrine. In Copperweld Corp. v. Independence Tube Corp., 467 U.S. 752 (1984), the Supreme Court held that a parent corporation was legally incapable of conspiring with its wholly owned subsidiary under section 1 of the Sherman Act. The Court reasoned that such intraenterprise relationships created a unity of interest whereby the two corporations acted as one, and thus, could not conspire with one another. Id. at 777.

Courts following Copperweld have held that a unity of interest can exist where the parent owns less than 100% of the subsidiary. See e.g., Direct Media Corp. v. Camden Tel. And Tel. Co., 989 F. Supp. 1211, 1216-17 (S.D. Ga. 1997) (Sherman section 1 claim dismissed under intraenterprise conspiracy doctrine where parent owned 51% of subsidiary). The relevant inquiry is not how much stock the parent owns, but whether the parent exerts *de facto* control over the business affairs of the subsidiary. It is, however, well settled that "[t]o determine whether corporate entities are separate enough to be capable of conspiracy, a court must examine the particular facts of the case before it." Las Vegas Sun, Inc. v. Summa Corp., 610 F.2d 614, 617 (9th Cir. 1979), cert. denied, 447 U.S. 906 (1980).

The factual analysis required to determine the corporate separateness of two entities was demonstrated in Sonitrol of Fresno Inc. v. American Tel. and Tel. Co., 1986 WL 953 (D.D.C. Apr. 30, 1986). There, AT&T was accused of conspiring with two Baby Bells, CBI and SNET, of whose stock AT&T owned 32.6% and 23.9 % respectively, to raise rates on phone lines needed by plaintiff, who was engaged in the distribution of remote alarm systems for businesses and homes.[13] The district court referred the matter for factual discovery to a special master whose recommendations the district court ultimately adopted. The special master found that CBI and SNET adhered to AT&T's corporate policies and that the subsidiaries' shareholders could not elect

[13] For the factual background of the case, see Sonitrol of Fresno Inc. v. American Tel. and Tel. Co., 629 F. Supp. 1089 (D.D.C. 1986).

a board of directors that would have acted independently of AT&T's interests. Id. at *4-5. Although the district court concluded that the parties lacked the legal unity of interest under Copperweld because it was possible for the CBI and SNET boards to act in their own interests, id. at *5, that conclusion was only reached after intense factual analysis of the relationship between the parties. (Notably, in the context of divestiture, the FCC required AT&T to structurally separate from CBI and SNET. In In the Matter of Motion of Cincinnati Bell Inc. for Declaratory Ruling to Remove Uncertainty of Its Status Under Commission Decisions in the Second Computer Inquiry, 88 F.C.C.2d 33, 1981 WL 158697 (October 7, 1981), the FCC found that AT&T's minority stock interests in CBI and SNET, at the time 29.7 % and 21.1 % respectively, combined with the dependent business relationship between AT&T and the Baby Bells, including AT&T's financial advances to the subsidiaries, compelled the conclusion that AT&T controlled the subsidiaries.)

Thus, as the intraenterprise conspiracy doctrine demonstrates, the relationship between two entities, even where the parent holds a minority interest in the subsidiary, requires factual evaluation. Clear Channel's substantial 28.7% holding of Hispanic stock, and the influence Clear Channel may exert over Hispanic's operations from that position, should be examined for any characteristics which would give Clear Channel, as a newly formed $25 billion media giant, the opportunity to avoid government regulation and reduce competition or obtain monopoly power in the radio markets where it and Hispanic own and operate stations, now and in the future, under the guise of Clear Channel's so-called "passive" investment in Hispanic. This approach also conforms with the reporting requirement under Hart-Scott-Rodino Premerger Notification, which requires government review of the acquisition of more than 10% of another entity, assuming the size of the transaction meets the notice requirement. This requirement reflects Congress's intent to insure scrutiny of investment holdings which, although claimed to be passive and for investment only, can in fact create a controlling relationship that could affect competition at any level greater than 10% of the stock of a target corporation.

Conclusion

Clear Chanel's 28.7% interest in Hispanic's stock when taken together with Hispanic's plans for significant short term expansion in the same markets where Clear Channel alone barely escapes threshold minimum anticompetitive issues, requires a thorough factual investigation. This is especially true since Clear Channel is already the largest radio operator in these same markets! Among the likely areas for examination are:

-- any agreements between Clear Channel and Hispanic relating to financing of Hispanic's proposed expansion;

-- any relationship between Clear Channel and Hispanic's board of directors or controlling shareholders;

-- any documents between the two entities concerning Clear Channel's instructions or preferences regarding Hispanic's corporate operations, i.e., acquisitions, mergers etc.;

-- any agreements or communications regarding Clear Channel's intent to convert its Class B stock into Class A voting stock or to acquire additional Hispanic stock; and

-- any documents regarding Clear Channel's corporate strategy in commonly owned radio markets generally and Spanish language radio specifically.

In light of the unprecedented proposed consolidation of Clear Channel and AMFM to create the largest out-of-home media company in the world, with over 830 domestic radio stations, it would best serve the public interest, especially the 11.8% of Americans that listen to Spanish language radio and the thousands that advertise to those listeners over the radio, for the Government to insure that competition in the top 25 radio markets remains robust and not subject to a potential behind-the-scenes manipulation by Clear Channel through its control of Hispanic. A thorough investigation of the relationship between Clear Channel and Hispanic is required.